

Transactions for the licensing of computer software may not be subject to ROT if the licensing agreements contain all the criteria set out in 86 Ill. Adm. Code 130.1935(a)(1).: (This is a GIL).

June 14, 1999

Dear Ms. Xxxxx:

This letter is in response to your letter dated April 30, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

CCOMPANY has been informed by FIRM that we should not be charging sales tax to our customers in Illinois. We have been charging sales tax on all of our Software Sales unless a customer was tax-exempt. Starting May 1999, COMPANY will not be charging sales tax to our customers. All of our Software Licenses are of perpetual nature. Could you please send us in writing that you have received this letter and give us a legal ruling concerning this matter.

According to State Regulation 67-185, Section 130.1935 for Computer Software, our contracts meet all five criteria's concerning non-taxable retail sales.

In general, gross receipts vendors receive from computer software licenses are subject to Retailers' Occupation Tax, unless the license agreements contain certain conditions. Licenses of software may not be subject to tax if the licenses meet all the criteria set out in 86 Ill. Adm. Code 130.1935(a)(1)(A-E). Please see the guidelines contained in the enclosed copy of Section 130.1935.

In order to be non-taxable, licenses must include the following provisions: 1. written agreements signed by licensors and customers; 2. restrictions limiting customers' duplication and use of the software; 3. restrictions prohibiting customers from licensing, sublicensing or transferring the software to unrelated third parties; 4. policies or provisions that vendors will provide another copy at minimal or no charge if customers lose or damage the software; and 5. requirements that customers destroy or return all copies of the software to vendors at the end of license periods.

Regarding provision #4, the Department has deemed software license agreements to have met this criterion as long as vendors' records reflect policies of providing copies of software at minimal or no cost if licensee customers lose or destroy the software.

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Provision #5 requires customers to destroy or return all copies of the software to vendors at the end of license periods. The Department has deemed perpetual license agreements to qualify for this criterion even though no provisions are included in the agreements requiring the return or the destruction of the software.

You can apply these guidelines to determine if your licenses qualify as non-taxable under Section 130.1935(a) (1). Please note we are only able to issue a binding determination for software licenses when we have been provided a copy of the license agreement to review in conjunction with a request for a Private Letter Ruling.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Karl W. Betz
Associate Counsel

KWB:msk
Enc.